CERTIFICATION OF CIRCUIT CLERK

STATE OF WEST VIRGINIA, COUNTY OF JEFFERSON

Clerk's Office of the Circuit Court
of Jefferson County,
At Charles Town, in said State,

I, **LAURA E. RATTENNI,** Clerk of said Court, having by law the custody of the seal, and all papers, books, documents and papers of or pertaining to said court, hereby certify the paper hereto annexed to be a true copy appertaining to said Court, and on file and of record in said office, to-wit:

BANK OF CHARLES TOWN,

Plaintiff(s)

vs.

ENCOMPASS INSURANCE
CT CORPORATION SYSTEM, et al,
Defendant(s)

Case Number: **10-C-312**
In Re: **DOCKET SHEET**

In attestation whereof I have hereunto set my hand and affixed the seal of said Court this September 17, 2010.

Laura E. Rattenni

LAURA E. RATTENNI, Clerk

By: Ashley Wimer
Deputy Clerk

CASE NO. 10-C-312 OPENED 8/27/2010

JUDGE... JUDGE DAVID H. SANDERS

PLAINTIFF. BANK OF CHARLES TOWN
VS DEFENDANT. ENCOMPASS INSURANCE CT CORP SYSTEM, ET AL

PRO ATTY.. LAURA DAVIS, ESQ.
DEF ATTY..

PAGE#	DATE	MEMORANDUM.............
00001	8/27/10	cvl cse info sht, rcpt 94511 $160.00, cvr ltr
00002	8/27/10	complaint
00003	8/27/10	plntfs 1st st of interr & rqsts 4 prdctn of dcmnts 2 encmps.
00004	8/27/10	...insurnce & encmps indmnty insrnce co, cos 1 davis
00005	8/27/10	smns, cmplnt, inter & rqst 4 prdctn of dcmnts 4 m grossman,.
00006	8/27/10	...encmps indmnty co & emcnps insrnce mld to sec of ste 4...
00007	8/27/10	...svce 083010
00008	8/27/10	smns, cmplnt, inter & rqst 4 prdctn of dcmnts 4 j wilson....
00009	8/27/10	...rtnd 2 atny 4 pps svce 083010
00010	9/02/10	srvc, rtn sec of ste rtnd 2 atty 2 be mld 2 sec of ste......
00011	9/02/10	...090210
00012	9/10/10	accptnc of srvc frm sec of ste 4 m. grossman on 090710
00013	9/10/10	accptnc of srvc frm sec of ste 4 encompass indmnty cmpny on.
00014	9/10/10	...090710, rcpt
00015	9/10/10	accptnc of srvc frm sec of ste 4 encompass insrnc cmpny on..
00016	9/10/10	...090710

CERTIFICATION OF CIRCUIT CLERK

STATE OF WEST VIRGINIA, COUNTY OF JEFFERSON

Clerk's Office of the Circuit Court
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I, **LAURA E. RATTENNI,** Clerk of said Court, having by law the custody of the seal, and all papers, books, documents and papers of or pertaining to said court, hereby certify the paper hereto annexed to be a true copy appertaining to said Court, and on file and of record in said office, to-wit:

BANK OF CHARLES TOWN,

Plaintiff(s)

vs.

ENCOMPASS INSURANCE
CT CORPORATION SYSTEM, et al,
Defendant(s)

Case Number: **10-C-312**
In Re: **COPY OF ENTIRE COURT FILE**

In attestation whereof I have hereunto set my hand and affixed the seal of said Court this September 17, 2010.

Laura E. Rattenni

LAURA E. RATTENNI, Clerk

By: Ashtyn Wimer
Deputy Clerk

August 27. 2010 Jefferson County

RECEIVED
AUG 27 2010
JEFFERSON COUNTY
CIRCUIT COURT

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

In the Circuit Court of Jefferson County, West Virginia

I. CASE STYLE:

Plaintiff(s)

BANK OF CHARLES TOWN

Case No. 10-C- 312
Judge DAVID H. SANDERS

vs.

Defendant(s)	Days to Answer	Type of Service
ENCOMPASS INSURANCE CT CORPORATION SYSTEM 5400 D BIG TYLER ROAD CHARLESTON, WV 25313	30	Secretary of State
ENCOMPASS INDEMNITY COMPANY CT CORPORATION SYSTEM 5400 D BIG TYLER ROAD CHARLESTON, WV 25313	30	Secretary of State
MICHELE A. GROSSMAN P.O. BOX 16203 READING, PA 19612-6203	30	Secretary of State
JOHN WILSON	____	private process per cvr ltr

Smns + cmplnt 4 encompass insurance ct corp, encompass indemnity cmpny, M. grossman mld 2 S.O. State 4 srvc 8/30/10 AW

Original and ____ Copies of Complaint furnished herewith.

PLAINTIFF: Bank of Charles Town DEFENDANT: Encompass Insurance, et al.	CASE NUMBER: 10-C-312

II. TYPE OF CASE

TORTS	OTHER CIVIL	
☐ Asbestos	☐ Adoption	☐ Appeal from Magistrate Court
☐ Professional Malpractice	☐ Contract	☐ Petition for Modification of Magistrate Sentence
☐ Personal Injury	☐ Real Property	☐ Miscellaneous Civil
☐ Product Liability	☐ Mental Health	☐ Other Lemon Law
☒ Other Tort	☐ Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No
CASE WILL BE READY FOR TRIAL BY (*MONTH/YEAR*): 3/11

IV. DO YOU OR ANY OR YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☐ NO
IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities
☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Other: ____________________

Attorney: **Laura C. Davis**
WV No. 7801
Firm: **Skinner Law Firm**
Address: **P. O. Box 487**
Charles Town, WV 25414-0487
Telephone: **(304)725-7029**

Representing: **Bank of Charles Town**

☒ *Plaintiff* ☐ *Defendant*
☐ *Cross-Complainant* ☐ *Cross-Defendant*

Dated: 8/27/10

[signature]
Signature

☐ *Pro Se*

NUMBER: 094511 August 27, 2010

Received of SKINNER LAW FIRM $160.00

The exact sum of One Hundred Sixty Dollars and No Cents

Plaintiff: BANK OF CHARLES TOWN
Defendant: ENCOMPASS INSURANCE CT CORP SYSTEM, ET AL

Payment type: Check Check# 039174

Case number: 10-C-312

Transaction conducted at: LAURA E RATTENNI,CIRCUIT CLERK

JEFFERSON COUNTY
CHARLES TOWN WV 25414

Deputy ______________________
AWIMER

DISTRIBUTION OF FUNDS...

1003 POSTAGE	15.00	1001 CLERKS FEES - OTHER	20.00
4003 RJA - CIVIL ($60-CIV	60.00	4008 CSF - CIVIL ($5)	5.00
4016 DV CIVIL LEGAL SERVI	10.00	4017 CFIA ($25-BOND; $10-	30.00
4018 RJO PARTIAL REIMBURS	20.00		

John C. Skinner, Jr.
Stephen G. Skinner (DC, NY & WV)
Andrew C. Skinner (IL & WV)
Laura C. Davis
F. Dean Nichols (1922-1990)

SKINNER
L A W F I R M

115 East Washington Street
PO Box 487
Charles Town, WV 25414-0487
(304) 725-7029
Fax (304) 725-4082

Writer's Email:
davis@skinnerfirm.com

www.skinnerfirm.com

RECEIVED BC
2010 AUG 27 AM 10: 58
JEFFERSON COUNTY
CIRCUIT CLERK

August 26, 2010

Honorable Laura E. Rattenni
Clerk of the Circuit Court of
Jefferson County
Charles Town, WV 25414
Via Hand Delivery

RE: Bank of Charles Town vs. Encompass Insurance, et al.

Dear Mrs. Rattenni:

Enclosed for filing, please find the following:

1. An original and two (2) copies each of a Complaint for service by the Secretary of State on Encompass Insurance, Encompass Indemnity Company and Michele Grossman.

2. An original and three (3) copies each of a Summons for service by the Secretary of State on Encompass Insurance, Encompass Indemnity Company and Michele Grossman.

3. One original and one copy of a Civil Case Information Sheet.

4. A check made payable to the Circuit Clerk for $160.00 ($145.00 for the filing fee and $15.00 for postal fees for service by the Secretary of State).

5. A check made payable to the Secretary of State for $60.00 for service on Encompass Insurance, Encompass Indemnity Company and Michele Grossman.

6. One original and one copy of a Request for Legal Process to be Served by the W.Va. Secretary of State for Encompass Insurance, Encompass Indemnity Company and Michele Grossman.

Please return the Serve and Return for John Wilson to our office.

Thank you for your attention. If you have any questions, please do not hesitate to call.

Very truly yours,

SKINNER LAW FIRM

Laura C. Davis

Enclosures
LCD/krb
cc: Bank of Charles Town

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN, *a West Virginia corporation,*

Plaintiff,

RECEIVED
AUG 27 2010
JEFFERSON COUNTY CIRCUIT COURT

vs. **CIVIL ACTION NO. 10-C-312**

ENCOMPASS INSURANCE, *a foreign corporation,* ENCOMPASS INDEMNITY COMPANY; *a foreign corporation underwriting Encompass Insurance,* MICHELE A. GROSSMAN, *senior claims representative of the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company;* JOHN WILSON, *supervisor for Michele A. Grossman at Encompass Insurance and/or Encompass Indemnity Company,* JOHN OR JANE DOE, *the unidentified claims adjuster for the subject insurance claim;* JOHN OR JANE DOE, *the unidentified supervisor for the John or Jane Doe claims adjuster;* JOHN OR JANE DOE, *the unidentified director and/or supervisor of all homeowner's claims in West Virginia for Encompass Insurance and/or Encompass Indemnity Company;* JOHN OR JANE DOE, *the unidentified director and/or supervisor of all West Virginia claims referred to the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company,*

Defendants,

COMPLAINT

COMES NOW the Plaintiff, Bank of Charles Town, by and through its counsel, Laura C. Davis, Stephen G. Skinner, and the Skinner Law Firm, and as its Complaint against Encompass Indemnity Company, and Encompass Insurance, Michelle A. Grossman, John Wilson, and the John and Jane Doe Defendants', do state as follows:

JURISDICTION AND VENUE

1. The Plaintiff was at all times relevant to the matters hereinafter set forth, a licensed domestic financial corporation with its principal place of business in Charles Town, Jefferson County, West Virginia.

2. The Defendant, Encompass Insurance, is a foreign corporation underwritten by Defendant Encompass Indemnity Company, and is incorporated in Illinois, which is also its principle place of business.

3. The Defendant, Encompass Indemnity Company, is a foreign corporation authorized to do business and it continues to do business in West Virginia; the Defendant corporation is incorporated in Illinois, which is also its principle place of business.

4. The Defendant, Michele A. Grossman, is a senior claims representative with the Special Investigative Unit at Encompass Insurance and/or Encompass Indemnity Company; upon information and belief, she resides in Pennsylvania.

5. The Defendant, John Wilson, is the supervisor for Defendant Michele A. Grossman at Encompass Insurance and/or Encompass Indemnity Company; this Defendant's residency is currently unknown.

6. The Defendant, John or Jane Doe, is the unidentified claims adjuster for the subject insurance claim; this Defendant's identity and residency are currently unknown.

7. The Defendant, John or Jane Doe, is the unidentified supervisor for the Defendant John or Jane Doe claims adjuster; this Defendant's identity and residency are currently unknown.

8. The Defendant, John or Jane Doe, is the unidentified director and/or supervisor of all homeowner's claims in West Virginia for Encompass Insurance and/or Encompass Indemnity Company; this Defendant's identity and residency are currently unknown.

9. This Court has jurisdiction over the Defendants and venue in the Circuit Court of Jefferson County, West Virginia, is proper.

COUNT I – BREACH OF CONTRACT AND BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING AGAINST ENCOMPASS INDEMNITY AND/OR ENCOMPASS INSURANCE

10. Plaintiff re-alleges paragraphs 1 through 9 and incorporates them herein by reference.

11. At all times relevant herein, Monte J. Palmer and Suzette S. Palmer agreed to purchase improved real property located at 11 Seattle Slew Way, in Martinsburg, West Virginia. (Find Real Estate Purchase Agreement, attached hereto as Exhibit A). The seller of the real estate was James A. Howard. ("Jim Howard").

12. The Palmers financed the purchase of the subject property though an installment sales contract with the original property owner, Jim Howard (See Exhibit A).

13. After the Palmers signed the Purchase Agreement (Exhibit A), they secured a homeowner's insurance policy through Encompass Indemnity Company, which company underwrites Encompass Insurance (hereinafter collectively referred to as "Encompass Insurance" or "Encompass Indemnity Company"). (Find a copy of the Declarations Page attached hereto as Exhibit B).

14. Pursuant to *Fliatreau v. Allstate Insurance Company*, 178 W.Va. 268, 358 S.E.2d 829 (1987), the Palmers had an insurable interest in the residence at 11 Seattle Slew Way, Martinsburg, West Virginia, even if the sales contract stated that the risk of loss was to be borne by the seller, James Howard.

15. On the Declarations Page, the Plaintiff was listed as "the mortgagee." In addition, Jim Howard was also listed as a person with an "interest" in insured premises at 11 Seattle Slew,

Martinsburg, West Virginia. (See Exhibit B).

16. The Encompass Defendants, their selling agent, and underwriting department(s), knew, or with reasonable diligence should have known, of the relationship between the Palmers, Jim Howard, and the Plaintiff, at the time of the issuance of the subject insurance policy.

17. The Encompass Defendants, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, the Agreement for the Purchase and Sale of the Improved Real Property with Preoccupancy Provision (Exhibit A) prior to issuance of the subject homeowner's insurance policy to the Palmers.

18. The Encompass Defendants, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, a copy of the Deed for the subject property prior to issuance of the homeowner's insurance policy to the Palmers.

19. The Encompass Defendants regularly required and accepted premium payments from the Palmers for homeowners coverage for the subject residence at 11 Seattle Slew Way, Martinsburg, West Virginia.

20. In the Spring of 2010, James Howard passed away.

21. On or about May 27, 2010, the Plaintiff foreclosed on the residence at 11 Seattle Slew Way in Martinsburg, West Virginia.

22. On May 28, 2010, the Plaintiff made contact with the Palmers and informed them that the Plaintiff had foreclosed on the property at 11 Seattle Slew Way.

23. On or about June 2, 2010, the Palmers were away from the home at 11 Seattle Slew Way and, upon return, discovered that water damage had occurred. The Palmers timely notified both the Plaintiff and the Encompass Defendants of the water damage.

24. After the Palmers notified the Encompass Defendants of the water damage, the

Encompass Defendants referred the matter to the Defendant, Michele Grossman, who worked in the Defendants' Special Investigative Unit.

25. On July 2, 2010, Michele Grossman arrived at the Palmers' residence at 11 Seattle Slew Way, Martinsburg, West Virginia, to interview the Palmers.

26. The Palmers invited a representative of the Plaintiff to attend the meeting and to meet the investigator.

27. On July 2, 2010, Defendant Michele Grossman took a recorded statement from the Palmers concerning the water damage as well as their Purchase Agreement with Jim Howard.

28. On or about July 23, 2010, the Plaintiff, through a representative, contacted Defendant Michele Grossman to discover the status of the Encompass Defendants' investigation and coverage determination.

29. On or about July 23, 2010, Defendant Michele Grossman advised the Plaintiff that she was under no obligation to tell the Plaintiff anything about the status of the Defendants' coverage investigation.

30. Despite the fact that the Palmers paid insurance premiums to Encompass for a number of years before the date of loss, the Encompass Defendants also refused to advise the Palmers about the status of the Encompass Defendants' coverage investigation.

31. On or about July 23, 2010, the Plaintiff requested Defendant Michele Grossman to provide a time frame in which Encompass would make its decision to pay or deny the claim; Defendant Michelle Grossman refused to provide a time frame and she asserted that she was under no obligation to do so.

32. On or about July 23, 2010, the Plaintiff inquired as to whether Defendant Michele Grossman would agree to transfer the Plaintiff to someone who would be willing to negotiate

and possibly settle the claim, and she advised that there was no such person.

33. Finally, Defendant Michele Grossman provided the Plaintiff with her supervisor's name, Defendant John Wilson. Although the Plaintiff's representative called and left a message for Defendant John Wilson, he never returned the call.

34. The Encompass Defendants, Defendants Michele Grossman and John Wilson, and the John and Jane Doe Defendants, failed to send any of the interested parties (the Plaintiff, the Howard Estate, and the Palmers), a reservation of rights letter concerning the water damage claim.

35. Pursuant to the standard mortgage clause in the Palmers' homeowner's insurance policy, the Plaintiff has an independent and distinct contract with the insurer, Encompass, as if the Plaintiff had taken out a separate policy with Encompass. *FirstBank of Shinnston v. West Virginia Insurance Company,* 185 W.Va. 754, 408 S.E.2d 777 (1991).

36. The Encompass Defendants, by and through Michelle Grossman, John Wilson, and the John and Jane Doe Defendants, breached the Encompass insurance contract with the Plaintiff by failing to timely investigate and/or resolve the subject water damage claim at the 11 Seattle Slew Way residence.

37. The Encompass Defendants, by and through Michelle Grossman, John Wilson, and the John and Jane Doe Defendants, breached the Encompass insurance contract with the Plaintiff by failing to promptly advise the Plaintiff of the status of the coverage investigation and by failing to timely affirm the claim.

38. Because the Encompass Defendants, by and through Michelle Grossman, John Wilson, and the John and Jane Doe Defendants, refused to provide information to the interested parties concerning the coverage investigation, the claim investigation, or the time frame

concerning either, Plaintiff has been forced to sue the Encompass Defendants for declaratory judgment to obtain such information.

39. By failing to properly communicate, and by failing to timely affirm and pay the subject claim, the Encompass Defendants have breached the insurance contract and their duty of good faith and fair dealing to the Plaintiff, who is the mortgagee listed on the subject insurance policy.

40. The Plaintiff has suffered damages, including but not limited to, the cost of repairing the water damage, as well as lost rental income during the time that Encompass Defendants dragged out the coverage investigation.

41. As a result of Encompass Defendants' breach of contract, breach of the duty of good faith and fair dealing, and other wrongful conduct, the Plaintiff is entitled to *Hayseeds* damages for being forced to sue to obtain information concerning the status of coverage, to obtain payment under the policy, and for other compensatory and punitive damages for the Defendants' first party bad faith.

COUNT II –VIOLATIONS OF THE WEST VIRGINIA UNFAIR TRADE PRACTICES ACT AGAINST ALL DEFENDANTS

42. Plaintiff re-alleges paragraphs 1 through 41 and incorporate them herein by reference.

43. The Palmers purchased an Encompass homeowner's policy for the residence at 11 Seattle Slew Way with coverage limits of $ 369,400 on the structure. (See Exhibit B).

44. The Palmers' policy period was from October 10, 2009 until October 10, 2010. (See Exhibit B).

45. The Encompass Defendants, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, the Agreement for the Purchase and Sale of the

Improved Real Property with Preoccupancy Provision (Exhibit A) prior to issuance of the subject homeowner's insurance policy to the Palmers.

46. The Encompass Defendants, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, a copy of the Deed for the subject property prior to issuance of the subject homeowner's insurance policy to the Palmers.

47. The Encompass Defendants regularly required and accepted premium payments from the Palmers for homeowners coverage for the subject residence at 11 Seattle Slew Way, Martinsburg, West Virginia.

48. On the date of loss, the Palmers were current on their insurance premiums and had timely paid all insurance premiums for the subject homeowner's policy for the residence at 11 Seattle Slew Way, Martinsburg, West Virginia.

49. Pursuant to the standard mortgage clause in the Palmers' homeowner's insurance policy, the Plaintiff has an independent and distinct contract with the insurer, Encompass, as if the Plaintiff had taken out a separate policy with Encompass. *FirstBank of Shinnston v. West Virginia Insurance Company*, 185 W.Va. 754, 408 S.E.2d 777 (1991).

50. The Plaintiff has a separate cause of action against the Encompass Defendants, Michelle Grossman, John Wilson, and the John and Jane Doe Defendants, for violations of the West Virginia Unfair Trade Practices Act, W.Va. Code § 33-11-4(9) in their handling of the subject water damage claim.

51. The Encompass Defendants, Michelle Grossman, John Wilson, and the John and Jane Doe Defendants, violated the West Virginia Unfair Trade Practices Act in the following ways:

a) At all times relevant herein, the Defendants violated W.Va. Code § 33-11-4(9)(c) by failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

b) At all times relevant herein, the Defendants violated W.Va. Code § 33-11-4(9)(e) by failing to affirm coverage within a reasonable period of time after proof of loss statements were completed;

c) At all times relevant herein, the Defendants violated W.Va. Code §33-11-4(9)(n) by failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

d) At all times relevant herein, the Defendants violated W.Va. Ins. Reg. § 114-14-6.2 by failing to establish sufficient investigatory procedures so as to ensure that a timely investigation would take place in the Plaintiff's claims.

52. In the handling of this and similar claims, the Defendants violated West Virginia Code § 33-11-4(9), and the insurance regulations promulgated thereunder, with such frequency so as to indicate a general business practice.

53. As a result of the Encompass Defendants' multiple violations of the West Virginia UTPA, as a general business practice, the Plaintiff is entitled to compensatory damages including but not limited to lost rental income, property damage, and increased attorneys fees and costs.

54. The Defendants' misconduct so willfully and completely disregarded the rights of the Plaintiffs that it gives rise to an award of punitive damages.

COUNT III – DECLARATORY JUDGMENT

55. Plaintiff re-alleges paragraphs 1 through 54 and incorporate them herein by reference.

56. Pursuant to the Declaratory Judgments Act, W.Va. Code § 55-13-1 *et seq.*, the Plaintiff seeks a declaration from this Court as to the Plaintiff's rights under the subject Encompass homeowner's policy no. 281216751 for the water damage claim at the Palmers'

residence at 11 Seattle Slew Way, Charles Town, WV.

57. In October of 2008, the Palmers went to an Encompass-approved insurance agency in order to obtain insurance for their residence at 11 Seattle Slew Way, Charles Town, WV.

58. The Encompass Defendants and their underwriting department(s) approved the Palmers to purchase a homeowner's insurance policy for the residence at 11 Seattle Slew Way, Charles Town, WV.

59. On the Encompass Declarations Page, the Plaintiff was listed as "the mortgagee." (See Exhibit A). In addition, Jim Howard was also listed as a person with an "interest" in insured premises at 11 Seattle Slew Way, Martinsburg, West Virginia. (See Exhibit B).

60. The Encompass Defendants, their selling agent, and underwriting department(s), knew, or with reasonable diligence should have known, of the relationship between the Palmers, Jim Howard, and the Plaintiff, at the time of the issuance of the insurance policy at issue.

61. The Encompass Defendants, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, the Agreement for the Purchase and Sale of the Improved Real Property with Preoccupancy Provision (Exhibit A) prior to issuance of the subject homeowner's insurance policy to the Palmers.

62. The Defendants Encompass, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, a copy of the Deed for the subject property prior to issuance of the subject homeowner's insurance policy to the Palmers.

63. The Encompass Defendants regularly required and accepted premium payments from the Palmers for homeowners coverage for the subject residence at 11 Seattle Slew Way, Martinsburg, West Virginia.

64. Pursuant to *Fliatreau v. Allstate Insurance Company*, 178 W.Va. 268, 358 S.E.2d 829 (1987), the Palmers had an insurable interest in the residence at 11 Seattle Slew Way, Martinsburg, West Virginia.

65. After the Palmers and the Plaintiff submitted a claim for the water damage at 11 Seattle Slew Way, the Encompass Defendants asserted that they did not owe any information to the "mortgagee" or the policyholder listed on the homeowner's policy.

66. The Encompass Defendants failed to send the Palmers and the Plaintiff a "reservation of rights," setting forth the basis for its delayed coverage investigation and its failure to pay.

67. The Encompass Defendants indicated that they will likely deny the claim because they assert that the Palmers did not have an insurable interest in the subject residence.

68. The Encompass Defendants are engaging in a "post-claim underwriting" in order to defeat coverage.

69. The Plaintiff seeks a declaration from this Court that, pursuant to the West Virginia Declaratory Judgments Act, W.Va. Code §55-13-1 et seq., the Plaintiff is entitled to not only information concerning the status of the Encompass Defendants' coverage investigation, but the Plaintiff is also entitled to insurance benefits as the listed "mortgagee" and first-party insured under the Palmers' policy.

ESTOPPEL/WAIVER

70. Plaintiff re-alleges paragraphs 1 through 69 and incorporate them herein by reference.

71. In October of 2008, the Palmers went to an Encompass-approved insurance agency in order to obtain insurance for their residence at 11 Seattle Slew Way, Charles Town,

WV.

72. The Encompass Defendants and their underwriting department(s) approved the Palmers to purchase a homeowner's insurance policy for the residence at 11 Seattle Slew Way, Charles Town, WV.

73. On the Encompass Declarations Page, the Plaintiff was listed as "the mortgagee." In addition, Jim Howard was also listed as a person with an "interest" in insured premises at 11 Seattle Slew Way, Martinsburg, West Virginia. (See Exhibit B).

74. The Encompass Defendants, their selling agent, and underwriting department(s), knew or with reasonable diligence should have known of the relationship between the Palmers, Jim Howard, and the Plaintiff, at the time of the issuance of the insurance policy at issue.

75. The Defendants Encompass, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, the Agreement for the Purchase and Sale of the Improved Real Property with Preoccupancy Provision (Exhibit A) prior to issuance of the subject homeowner's insurance policy to the Palmers.

76. The Defendants Encompass, their selling agent, and underwriting department(s), obtained, or had every opportunity to obtain, a copy of the Deed for the subject property prior to issuance of the subject homeowner's insurance policy to the Palmers.

77. The Encompass Defendants regularly required and accepted premium payments from the Palmers for homeowners coverage for the subject residence at 11 Seattle Slew, Martinsburg, West Virginia.

78. Now that the Palmers and the Plaintiff have submitted a claim for the water damage at the subject home, the Encompass Defendants have asserted that they do not owe information concerning coverage to the "mortgagee" or the policyholder as listed on the subject

homeowner's policy.

79. The Encompass Defendants have failed to send to the Palmers and the Plaintiff a "reservation of rights," setting forth the basis for its coverage investigation and delayed claim adjustment.

80. The Encompass Defendants must be estopped from denying coverage benefits to the Plaintiff on the basis its underwriting process and/or failure to obtain information that it now asserts that it needs concerning the subject property and ownership of the same.

81. The Defendants have waived their right to challenge the Palmers' insurable interest after the water damage claim was made under the subject homeowner's policy.

WHEREFORE, the Plaintiffs demand the following judgment from the Defendants:

a) Declaratory Judgment that the Encompass Indemnity policy provides coverage for the residence at 11 Seattle Slew Way, Martinsburg, West Virginia;

b) That Plaintiff is entitled to payment under the Encompass Indemnity policy as a first-party insured for the water damage claim;

c) That the Plaintiff is entitled to attorney's fees, costs, damages for annoyance and inconvenience, and net economic losses under *Hayseeds*, and its progeny;

d) Compensatory and punitive damages arising out of the Defendants' common law and statutory bad faith conduct;

e) Pre-Judgment interest and post-judgment interest; and

f) Any such further relief allowed by law.

PLAINTIFFS DEMAND A TRIAL BY JURY

Bank of Charles Town
By Counsel

Laura C. Davis (WV Bar No. 7801)
Stephen G. Skinner (WV Bar No. 6725)
SKINNER LAW FIRM
P.O. BOX 487
Charles Town, WV 25414
(304) 725-7029/Fax: (304) 725-4082
davis@skinnerfirm.com

RECEIVED
AUG 27 2010
JEFFERSON COUNTY
CIRCUIT COURT

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN, ***a West Virginia corporation,***

Plaintiff,

vs. **CIVIL ACTION NO. 10-C- 312**

ENCOMPASS INSURANCE, ***a foreign corporation,*** **ENCOMPASS INDEMNITY COMPANY;** ***a foreign corporation underwriting Encompass Insurance,*** **MICHELE A. GROSSMAN,** ***senior claims representative of the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company;*** **JOHN WILSON,** ***supervisor for Michele A. Grossman at Encompass Insurance and/or Encompass Indemnity Company,*** **JOHN OR JANE DOE,** ***the unidentified claims adjuster for the subject insurance claim;*** **JOHN OR JANE DOE,** ***the unidentified supervisor for the John or Jane Doe claims adjuster;*** **JOHN OR JANE DOE,** ***the unidentified director and/or supervisor of all homeowner's claims in West Virginia for Encompass Insurance and/or Encompass Indemnity Company;*** **JOHN OR JANE DOE,** ***the unidentified director and/or supervisor of all West Virginia claims referred to the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company,***

Defendants.

PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO ENCOMPASS INSURANCE AND ENCOMPASS INDEMNITY INSURANCE COMPANY

You are hereby requested to answer the following Interrogatories and Requests for Production of Documents under oath within forty-five (45) days of the service thereof, in accordance with the applicable provisions of the West Virginia Rules of Civil Procedure.

a. These Interrogatories are continuing in character with regard to all information in your possession or that of your attorney so as to require you or your attorney to file supplementary answers if you obtain further or different information before trial;

b. The term **"documents"** includes, but is not limited to, all paper material of any kind, whether written, typed, printed, punched, filmed or marked in any way; recording tapes or wires; any form of magnetic data, whether stored on disc, drum, core or in any other matter; film, photographs, movies, or any graphic matter, however produced or reproduced; and all mechanical or electronic sound recording or transcripts thereof; and every other device or medium in which or through which information of any type is transmitted, recorded, or preserved. The copies of such documents must be clear and legible, and must include the entire document; that is, all the pages, amendments, addenda, and attachments.

c. **"Yours"** and **"you"** refer to the person to whom these Interrogatories are addressed, and all of its predecessors or successors as well as its agents, employees, servants, representatives, subrogors, subrogees, and its attorneys, and all other persons acting or purporting to act in its behalf or at its direction.

d. The term **"person"** includes: a corporation, partnership or other business association; any trade or industry association; a natural person; any government or governmental body, commission, board or agency; or any other entity.

e. **"Identify"** or **"identification"** when used in reference to a natural person means to state his or her full name, present address, home and business telephone numbers, and his or her present position and business affiliation. When used in reference to a person other than a natural person, **"identify"** or **"identification"** means to state whether such a person is a corporation, partnership, or other organization, and its name, present and last known address, telephone number, and principal place of business. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state his or her name only.

f. **"Identify"** or **"identification"** when used in reference to a document means to state the date, the author (or, if different, the signer or signers), the addressee, type of document (e.g. letter, memoranda, telegram, chart, photograph, electronic file, sound tape, computer program, etc.) If any such document was, but is no longer in Defendant's possession or subject to Defendant's control, state what disposition was made of it and the reason for such disposition. In lieu of identifying any document, a true and correct copy thereof may be annexed to and incorporated in the Answers to these Interrogatories. Whenever a document or documents are annexed to and incorporated in the Answers to Interrogatories, they must be clear and legible copies and must include the entire document; that is, all the pages and amendments, addenda, and attachments thereto.

g. Where knowledge or information of, or possession or control by a party is requested or inquired of, such request or inquiry includes knowledge, information, possession or control of or by the party's agents, servants, employees, representatives, and his attorneys.

h. If you contend that one or more parts of an Interrogatory are objectionable, answer each portion of the Interrogatory that you do not contend is objectionable.

i. If you claim privilege with respect to any information requested, specify the privilege claimed, the statute, the rule or decision giving rise to that privilege, and give a brief description of the nature of the information or document being withheld, including the author, recipient, and person to whom the information or document has been furnished previously.

j. In producing the documents requested herein, indicate the specific requests in response to which each document or group of documents is being produced. Attach clearly legible copies to your response hereto, or produce such requested documents and things for inspection and copying at the law offices of the undersigned at 115 E. Washington Street, P. O. Box 487, Charles Town, WV 25414.

INTERROGATORIES

INTERROGATORY NO. 1: For Defendants Encompass Insurance and Encompass Indemnity, please state their parent, and all affiliates, subsidiaries, sister companies, and group(s) through which they do business. For each such entity identified, please state its legal name, principle business address and telephone number, state of incorporation, form of doing business (i.e. corporation, partnership, group, etc.), all names under which each such entity is doing business, the lines of insurance offered by each, and all States in which each such entity, including its agents, employees or servants, are authorized to do business as an insurance company or as insurance claims adjustors. Your response should also state all relationships among Encompass Insurance, Encompass Indemnity, and all other entity identified in response herein, including, but not limited to, common ownership, or common directors or officers.

ANSWER:

INTERROGATORY NO. 2: Please identify, by name, business and home address and telephone number, and present employer, and title of each and every employee, agent or servant of the Defendants who had any responsibility for, or participation in, the adjustment, supervision, investigation, coverage analysis, and handling of the Plaintiff's claim, which is the subject of the Complaint including but not limited to John Wilson and the John and Jane Doe Defendants.

ANSWER:

INTERROGATORY NO. 3: For each person identified in response to Interrogatory No. 2, above, please state the following:

(a) The job title and job description for each such person and, if such person's job title and description changed from the notice of the Plaintiff's claim to the present, state the specific date(s) of each such change for such person, and state the new job title and description for that person; and,

(b) Describe with particularity each responsibility exercised and specific decisions made by each individual during the time period relevant to the Complaint, with regard to adjustment, investigation, coverage analysis, supervision and handling of the Plaintiff's claim.

ANSWER:

INTERROGATORY NO. 4: To these Defendants' knowledge, have any files, documents, compendiums of documents, or tangible items of any kind or nature including, but not limited to, data stored on magnetic storage media connected with the insurance claims and/or handling of the claims of the Plaintiff which are subject of this action been destroyed, altered, lost, or been removed from the custody or control of these Defendants. If so, please identify, by date, title and detailed description of the contents of all such documents or tangible items which have been destroyed, altered, lost, or been removed from the custody or control of these

Defendants, and give a detailed explanation as to how such destruction, alteration, loss or removal occurred for each such document and, if custody and control has been transferred to some other party or entity, identify the individual or entity having such current custody or control by listing the full name, home and business telephone number, home and business address, title of that person or entity, and that person or entity's principle place of business, and the date such custody or control was transferred.

ANSWER:

INTERROGATORY NO. 5: Please identify by date(s), author(s), and all recipient(s), each and every evaluation of the claim and the coverage issues arising therefrom, done at any time after the Defendants' first notice of the claim, and provide for each author and recipient of such evaluation, their business addresses and telephone numbers, their job title, job description, and their settlement authority, if applicable.

ANSWER:

INTERROGATORY NO. 6: Have the Defendants at any time within the past 10 (ten) years, in the State of West Virginia, paid any money or granted any other thing of value in order to settle, resolve, or to satisfy any judgment, claim, or allegation, either directly or indirectly, which: (1) asserts wrongful denial of coverage; (2) asserted first-party unfair insurance claims settlement practices; (3) asserted other insurance bad faith settlement conduct of any kind or nature; or, (4) asserted violations of the West Virginia Unfair Trades Practices Act, W.Va. Code

§33-11-1, et seq., against the Defendant? If the answer to this Request is in the affirmative, please provide the following information for each:

(a) Name, address and telephone number of the claimant or claimants and their attorneys, if any;

(b) Name, home and business addresses and telephone number of any of your agents, servants, or employees whose conduct was at issue in the claim, including the current employment status of such individual or individuals with you and such person's last known address and telephone number;

(c) A brief description of the allegations against you, your agents, servants and employees; and,

(d) The details of any settlement, resolution, verdict, judgment, or any other disposition of each such dispute, whether in writing or oral.

ANSWER:

INTERROGATORY NO. 7: For all claims adjustors handling West Virginia claims, please state the following:

(a) The name, current business address and telephone number of all persons currently employed by you, including any supervisors and managers, who adjust or supervise insurance claims in West Virginia; and

(b) The name, current home and business address and telephone number of all persons **formerly** employed by you, including any supervisors and managers, who adjusted or supervised claims in West Virginia, from the years including 2005 through the present. If you do not maintain current information or former employees, please provide the last known address and telephone number in your possession for such former employee which can be obtained from such employees last Form W-2, Form 1099, or other payroll or retirement information.

If you claim that such information does not exist in any storage medium or are not retrievable from any computer database, please affirmatively state so.

ANSWER:

INTERROGATORY NO. 8: Please state the name, business address and telephone number of each and every person whom you believe to have knowledge with respect to the allegations set forth in the Complaint and/or your defenses thereto (whether you claim privilege with respect to any communications with them), or any other matter related to your denial of wrongdoing in this civil action; and, please include the subjects of the information and a summary of the facts within each such person's knowledge.

ANSWER:

INTERROGATORY NO. 9: Please state the name of each and every person with any expertise, of any kind or nature, who was contacted or consulted with, whether in writing or verbally, by or on behalf of the Defendant, regarding or relating to the Plaintiff's coverage claim. This request should be broadly construed to include every person involved in the investigation or analysis, contacted or consulted with in the investigation or analysis, including both inside and outside attorneys, and please set forth in detail each person's findings and/or conclusions, and identify each and every document which references, reflects or relates to said discussions, findings and/or conclusions. To the extent that the Defendant claims any privilege, please provide a privilege log in accordance with West Virginia law for any such documents withheld from discovery.

ANSWER:

INTERROGATORY NO. 10: With respect to each and every person identified in Interrogatory No.9, please state the following:

(a) The name, current business address and telephone number of each and every such person;

(b) The date each such person was first contacted concerning whether the Plaintiff's claim should, could, or might be denied and the dates of each subsequent contact or consultations;

(c) The specific aspects of the claim on which **each** such person was contacted or consulted as of each of the dates stated in response to (b);

(d) A detailed summary of the facts, documents and any other tangible items that was conveyed or provided to each such person identified in (a), above and,

(e) Provide a detailed summary of the substance of the opinions or conclusion held by each such person on **each** date contacted or consulted; and,

(f) State the full fee each such person charged regardless of whether paid by or on behalf of Encompass Insurance and/or Encompass Indemnity or any of its collective agents, servants, or employees, including any and all attorneys.

ANSWER:

INTERROGATORY NO. 11: Provide the name, address and job title of each person who assisted in answering these Interrogatories and Request for Production of Documents and for each of such person, list which interrogatories and/or request for production of documents were answered by which of said individuals or combination of individuals.

ANSWER:

INTERROGATORY NO. 12: If any response to the requests for admissions, served contemporaneously herein, was anything other than an unequivocal "admit," please state the following:

a) The basis for the denial or qualified response;

b) All facts pertaining to the denial or qualified response;

c) All witnesses who can support said denial or qualified response; and

d) Any documents or other tangible evidence to support said denial or qualified response.

ANSWER:

INTERROGATORY NO. 13: If you contend that Encompass Insurance and/or Encompass Indemnity provided the Plaintiff with written notice concerning the status of the coverage investigation and/or the findings thereof, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 14: If you contend that Encompass Insurance and/or Encompass Indemnity's communications with the Plaintiffs concerning the coverage investigation were proper, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 15: If you contend that Encompass Insurance and/or Encompass Indemnity has not improperly dragged out the coverage investigation, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 16: If you contend that Encompass Insurance and/or Encompass Indemnity had no objection to provide the Plaintiff with information concerning its coverage investigation, delivered or sent by first-class mail to the Plaintiff notice of cancellation of their homeowner's insurance coverage, please identify with specificity all evidence that proves that a proper delivery or mailing occurred, and the date thereof, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 17: If you contend that the Plaintiff does not have an "insurable interest" in the residence at 11 Seattle Slew Way, Martinsburg, West Virginia, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 18: If you contend that Encompass Insurance and/or Encompass Indemnity does not owe the Plaintiff benefits for the water damage claim at 11 Seattle Slew Way, Martinsburg, West Virignia, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 19: If you contend that the Palmers made misrepresentations when they sought insurance coverage for 11 Seattle Slew Way, Martinsburg, West Virginia, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 20: If you contend that the Encompass-authorized insurance agent who sold the Palmers the Homeowners policy at 11 Seattle Slew Way, Martinsburg, West Virginia, was some how prevented from receiving a copy of the Purchase Agreement (Ex. A to the Complaint) or a copy of the Deed, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 21: If you contend that the Palmers somehow prevented underwriting from conducting a through analysis concerning the Palmers "insurable interest" in the residence at 11 Seattle Slew Way, Martinsburg, West Virginia, please set forth each and every fact upon which you base your contention, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 22: Please set forth each and every fact upon which you base Encompass Insurance and/or Encompass Indemnity acted in good faith and in compliance with applicable law, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

INTERROGATORY NO. 23: Please set forth each and every fact upon which you base that, to the extent that the policy was not properly cancelled, the Plaintiffs' claims are barred in whole or in part by the terms, conditions, and exclusions of the policy, identifying all persons with knowledge of such facts, and each and every document that references, refers or relates to such facts.

ANSWER:

DOCUMENT PRODUCTION REQUEST

REQUEST NO. 1: All claims manuals and training materials of Encompass Insurance Encompass Indemnity from 2005 to the present. This seeks all written policies, procedures, guidelines, instructional material providing guidance to claims investigators, adjustors, selling agents and underwriters having to do with any aspect of claims handling, sales, special investigations, underwriting and coverage analysis including but not limited to underinsured motorist coverage investigations and evaluations of claims.

RESPONSE:

REQUEST NO. 2: All memoranda, diary entries, notes or other writings which in any way document discussions between any representative of Encompass Insurance, Encompass Indemnity and any other person relating to Plaintiff's claim for coverage, and payment of the water damage claim at 11 Seattle Slew Way, under any and all provisions of the Palmer's insurance policy. To the extent that the Defendant claims any privilege, please provide a privilege log in accordance with West Virginia law for any such documents withheld from discovery.

RESPONSE:

REQUEST NO. 3: The most recent organizational chart(s) or diagram(s) of Encompass Insurance and Encompass Indemnity, including its claims and claims legal departments.

RESPONSE:

REQUEST NO. 4: The financial statements of Encompass Insurance and Encompass Indemnity for the years 2005 to the present.

RESPONSE:

REQUEST NO. 5: All written documents produced to all experts you intend to call at the trial of the matters in the Complaint, together with a copy of each expert's curriculum vitae and any correspondence to, from, or between said experts and Encompass Insurance and Encompass Indemnity, and any and all reports, or draft reports, opinions or correspondence.

RESPONSE:

REQUEST NO. 6: All insurance policies under which any person or firm carrying on an insurance business may be liable to satisfy part of or all of a judgment which may be entered with respect to the matters alleged against you in the Complaint, or to indemnify or reimburse for payments made to satisfy any such judgment.

RESPONSE:

REQUEST NO. 7: Please produce each and every coverage and claim evaluation and/or decision you were asked to identify in your Response to the Interrogatories served herewith, whether the same was in written form or maintained on a computerized medium. For each such evaluation or decision that you consider non-discoverable on the basis of privilege, please state with particularity, and in accordance with case law, why such information is not discoverable.

RESPONSE:

REQUEST NO. 8: Please produce each and every document which sets forth the details of any claims made against you for insurance bad faith conduct and/or violations of the Unfair Trade Practices Act (W.Va. Code § 33-11-1, et seq.), and its attendant regulations (114 CSR 14, et seq.), OR any other claim relating, in any way, to the Defendants' bad faith conduct in the insurance industry, whether said documents are correspondence, grievances, complaints made to the West Virginia Insurance Commissioner or complaints filed in court and regardless of whether more than one document is necessary to set forth all such claims made against these Defendants; and, in each instance, please produce any documents which reflect any resolution or settlement of each and every claim made, including documents which specify the amount of money paid to settle or resolve such claim, or which specifies other valuable consideration provided to resolve or settle such claim. This request shall include any "confidential settlement" or "resolutions" for each such claim; and, please produce any document or other tangible item related to each such settlement or resolution. This request is limited to matters occurring or resolved in West Virginia within the last ten (10) years.

RESPONSE:

REQUEST NO. 9: Please produce any document or tangible items regarding or referring to each of the individuals identified in Interrogatory No. 2 including, but not limited to, their respective job descriptions as well as any documents from each of those individual's personnel files, which in any way would reflect any positive or negative employment action, promotion, bonus, discipline, criticism, evaluation, warning or any other such notice, regardless of form, designation, or label, concerning their conduct as it related to: (1) insurance claims handling; (2) insurance claims settlement; (3) any violation of any West Virginia insurance law or regulation including, but not limited to, the West Virginia Unfair Trade Practices Act; (4) any violation of the Defendants' internal claims handling or settlement practices and procedures, or underwriting practices and procedures; (5) any incentive or penalty of any kind relating to claims resolution or underwriting practices. If there are no such documents or computerized information for any particular individual, then state affirmatively that such information does not exist.

RESPONSE:

REQUEST NO. 10: Please produce the complete record kept by the Defendant pursuant to W.Va. Code § 33-11-4(10), for the past ten (10) years to the present date.

RESPONSE:

REQUEST NO. 11: Please produce documents or tangible items that accurately reflect: (1) the total value of Encompass Insurance and Encompass Indemnity 's investment assets/portfolio, regardless of how named or classified, whether "held for sale" or "held for investment;" (2) a list of the individual investments by category regarding stocks, bonds, real estate loans, etc., comprising any such investment assets/portfolio; (3) the gross amount of income earned from such investment assets/portfolio; and, (4) the annual effective rate or return (before and after taxes) earned on such investment assets/portfolio, for the end of each of the last five fiscal years. This Request should be constructed to require production of any and all responsive documents prepared (1) under Generally Accepted Accounting Principles; (2) State statutory accounting requirements; and, (3) any other accounting method; both audited and unaudited.

RESPONSE:

REQUEST NO. 12: Please produce each and every file, document or compendium of documents, however stored or maintained, and however named and wherever located, within your possession or control or within the possession and control of any of your agents, servants or employees, which in any manner it related or refers to Plaintiff's claims, the sale of the subject homeowner's policy, the coverage investigation, the adjustment of the claims, the analysis of coverage, or the investigation of the claims, including but not limited to, the claims file for the instant claim.

The purpose of this request is to obtain all documents or tangible items in your possession, custody or control or any of your agents, attorneys, representatives, or any other person or entity of which you are reasonably able to obtain custody, control or possession of such documents or tangible items that in any way relates to the claims of the Plaintiff in this case both before the filing of suit, and after the filing of suit. In effect, any document or tangible item which in any manner relates in any way with the claims of the Plaintiff at any time should be produced in its original form. **If such responsive documents or tangible items are produced in response to other Requests, herein, you may respond to the Request by identifying the document or tangible item so produced with such specificity, including page numbers, that Plaintiff and the Court will be able to identify the same.**

RESPONSE:

REQUEST NO. 13:, Please produce the insurance agent's file as well as all underwriting files however named, labeled or designated.

RESPONSE:

REQUEST NO. 14: Please produce each and every copy or version of the documents or tangible items forwarded to or received from any retained experts you were asked to identify in response to the Interrogatories served herewith, including all correspondence enclosing said information, and produce any opinions prepared by those individuals, including each and every copy or version of such writing, document or tangible item provided by that person.

RESPONSE:

REQUEST NO. 15: Please produce all documents or tangible items you were asked to identify in response to the Interrogatories served herewith.

RESPONSE:

BANK OF CHARLES TOWN
By Counsel

Stephen G. Skinner (WV No. 6725)
Laura C. Davis (WV No. 7801)
Counsel for Third-Party Plaintiffs
SKINNER LAW FIRM
P.O. Box 487
Charles Town, WV 25414
(304) 725-7029/Fax: (304) 725-4082

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN, *a West Virginia corporation,*

Plaintiff,

vs. **CIVIL ACTION NO. 10-C- 312**

ENCOMPASS INSURANCE, *a foreign corporation,* ENCOMPASS INDEMNITY COMPANY; *a foreign corporation underwriting Encompass Insurance,* MICHELE A. GROSSMAN, *senior claims representative of the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company;* JOHN WILSON, *supervisor for Michele A. Grossman at Encompass Insurance and/or Encompass Indemnity Company,* JOHN OR JANE DOE, *the unidentified claims adjuster for the subject insurance claim;* JOHN OR JANE DOE, *the unidentified supervisor for the John or Jane Doe claims adjuster;* JOHN OR JANE DOE, *the unidentified director and/or supervisor of all homeowner's claims in West Virginia for Encompass Insurance and/or Encompass Indemnity Company;* JOHN OR JANE DOE, *the unidentified director and/or supervisor of all West Virginia claims referred to the Special Investigative Unit for Encompass Insurance and/or Encompass Indemnity Company,*

Defendants.

CERTIFICATE OF SERVICE

I, Laura C. Davis, of the SKINNER LAW FIRM do hereby certify that I have served ***PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR***

PRODUCTION OF DOCUMENTS TO ENCOMPASS INSURANCE AND ENCOMPASS INDEMNITY INSURANCE COMPANY **upon the Defendants with service of the Complaint on this 27th day of August, 2010.**

Laura C. Davis

File
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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. 10-C-312

ENCOMPASS INSURANCE, et al.

Defendants.

SUMMONS

To the above-named Defendant:

MICHELLE GROSSMAN
P.O. BOX 16203
READING, PA 19612-6203

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattenni
Clerk of the Circuit Court

By: Ashtyn Wimer, Dep

Request for Legal Process to be Served by the West Virginia Secretary of State

Please serve the named defendant, Michele Grossman, in the attached matter according to the provision of law cited below. The fee of $20 per defendant required by W. Va. Code §59-1-2 is attached ($30 if defendant is out of U.S.). Check all applicable:

- ☐ §21A-5-17c — Service on non-resident employer & others liable for unemployment compensation payments
- ☐ §29-19-14 — Service on professional fund raising counsel, nonresident charitable organizations or professional solicitors soliciting contributions from people in this State
- ☐ §31D-5-504 & §56-3-13 — Service on authorized domestic corporation
- ☐ §31D-15-1510 — Service on authorized foreign corporation
- ☐ §31D-15-1510 — Service on unauthorized foreign corporation
- ☐ §31B-1-111 & §31B-9-906 — Service on authorized domestic or foreign limited liability company
- ☐ §33-4-12 — Service on licensed insurer
- ☐ §33-4-13 & §33-2-22 — Service on unlicensed or unauthorized foreign insurer
- ☐ §38-1A-7 & §38-1A-8 — Service on non-resident trustee of a security trust
- ☐ §46A-2-137 — Service on certain nonresidents under WV Consumer Credit and Protection Act
- ☐ §47-9-4 — Service on authorized domestic or foreign limited partnership formed under §47-9, or limited liability partnership (LLP) formed under §47B-10 (see also §56-3-13a, §47B-9-6)
- ☐ §47-9-4 — Service on unauthorized foreign limited partnership or LLP
- ☐ §56-3-31 — Service on nonresident motor vehicle operator involved in an accident in this state, or on his/her insurer
- ☒ §56-3-33(a) — Service on individual under the long-arm statute because the individual is:
  - ☒ (1) Transacting business in this state
  - ☐ (2) Contracting to supply services or things in this State
  - ☒ (3) Causing tortious injury in this state by act or omission (see §56-3-33(4) for description of causing tortious injury)
  - ☐ (4) Non-support of minor children (pursuant to Lozinski v. Lozinski)
  - ☐ (5) Causing injury in this State by breach of warranty
  - ☐ (6) Having interest in, using or possessing real property in this State
  - ☐ (7) Contracting to insure person, property or risk located in WV at the time of contracting
- ☐ §38-5A-5 — Service of suggestee execution as provided for in §38-5A

File
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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. **10-C-312**

ENCOMPASS INSURANCE, et al.

Defendants.

SUMMONS

To the above-named Defendant:
ENCOMPASS INDEMNITY COMPANY
CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattenni
Clerk of the Circuit Court

By: Ashley Wimer, Dep.

Request for Legal Process to be Served by the West Virginia Secretary of State

Please serve the named defendant, Encompass Indemnity Company, in the attached matter according to the provision of law cited below. The fee of $20 per defendant required by W. Va. Code §59-1-2 is attached ($30 if defendant is out of U.S.). Check all applicable:

☐ §21A-5-17c	Service on non-resident employer & others liable for unemployment compensation payments
☐ §29-19-14	Service on professional fund raising counsel, nonresident charitable organizations or professional solicitors soliciting contributions from people in this State
☐ §31D-5-504 & §56-3-13	Service on authorized domestic corporation
☐ §31D-15-1510	Service on authorized foreign corporation
☐ §31D-15-1510	Service on unauthorized foreign corporation
☐ §31B-1-111 & §31B-9-906	Service on authorized domestic or foreign limited liability company
☒ §33-4-12	Service on licensed insurer
☐ §33-4-13 & §33-2-22	Service on unlicensed or unauthorized foreign insurer
☐ §38-1A-7 & §38-1A-8	Service on non-resident trustee of a security trust
☐ §46A-2-137	Service on certain nonresidents under WV Consumer Credit and Protection Act
☐ §47-9-4	Service on authorized domestic or foreign limited partnership formed under §47-9, or limited liability partnership (LLP) formed under §47B-10 (see also §56-3-13a, §47B-9-6)
☐ §47-9-4	Service on unauthorized foreign limited partnership or LLP
☐ §56-3-31	Service on nonresident motor vehicle operator involved in an accident in this state, or on his/her insurer
☐ §56-3-33(a)	Service on individual under the long-arm statute because the individual is:

- ☐ (1) Transacting business in this state
- ☐ (2) Contracting to supply services or things in this State
- ☐ (3) Causing tortious injury in this state by act or omission (see §56-3-33(4) for description of causing tortious injury)
- ☐ (4) Non-support of minor children (pursuant to Lozinski v. Lozinski)
- ☐ (5) Causing injury in this State by breach of warranty
- ☐ (6) Having interest in, using or possessing real property in this State
- ☐ (7) Contracting to insure person, property or risk located in WV at the time of contracting

☐ §38-5A-5	Service of suggestee execution as provided for in §38-5A

FIC
Smns, cmplnt, + plntff 1st set of intrgtrs mld 2 sec of State 4 srvc
8/30/10
AW

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. 10-C-312

ENCOMPASS INSURANCE, et al.

Defendants.

SUMMONS

To the above-named Defendant:
ENCOMPASS INSURANCE
CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattini
Clerk of the Circuit Court

By: Ashtyn Wimer, Depu

Request for Legal Process to be Served by the West Virginia Secretary of State

Please serve the named defendant, Encompass Insurance, in the attached matter according to the provision of law cited below. The fee of $20 per defendant required by W. Va. Code §59-1-2 is attached ($30 if defendant is out of U.S.). Check all applicable:

☐ §21A-5-17c	Service on non-resident employer & others liable for unemployment compensation payments
☐ §29-19-14	Service on professional fund raising counsel, nonresident charitable organizations or professional solicitors soliciting contributions from people in this State
☐ §31D-5-504 & §56-3-13	Service on authorized domestic corporation
☐ §31D-15-1510	Service on authorized foreign corporation
☐ §31D-15-1510	Service on unauthorized foreign corporation
☐ §31B-1-111 & §31B-9-906	Service on authorized domestic or foreign limited liability company
☒ §33-4-12	Service on licensed insurer
☐ §33-4-13 & §33-2-22	Service on unlicensed or unauthorized foreign insurer
☐ §38-1A-7 & §38-1A-8	Service on non-resident trustee of a security trust
☐ §46A-2-137	Service on certain nonresidents under WV Consumer Credit and Protection Act
☐ §47-9-4	Service on authorized domestic or foreign limited partnership formed under §47-9, or limited liability partnership (LLP) formed under §47B-10 (see also §56-3-13a, §47B-9-6)
☐ §47-9-4	Service on unauthorized foreign limited partnership or LLP
☐ §56-3-31	Service on nonresident motor vehicle operator involved in an accident in this state, or on his/her insurer
☐ §56-3-33(a)	Service on individual under the long-arm statute because the individual is:

- ☐ (1) Transacting business in this state
- ☐ (2) Contracting to supply services or things in this State
- ☐ (3) Causing tortious injury in this state by act or omission (see §56-3-33(4) for description of causing tortious injury)
- ☐ (4) Non-support of minor children (pursuant to Lozinski v. Lozinski)
- ☐ (5) Causing injury in this State by breach of warranty
- ☐ (6) Having interest in, using or possessing real property in this State
- ☐ (7) Contracting to insure person, property or risk located in WV at the time of contracting

☐ §38-5A-5	Service of suggestee execution as provided for in §38-5A

File
Smns, cmplnt + plntf 1st set of intrgtrs 4 J Wilson rtnd 2 atty 4 P.P.S.
8/30/10
AW

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. **10-C- 312**

ENCOMPASS INSURANCE, et al.

Defendants.

SUMMONS

To the above-named Defendant:

JOHN WILSON

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattenni
Clerk of the Circuit Court

By: Ashlyn Winner, Depy

SERVE, RETURN
Sec. of State
RETURNED TO
ATTNY TO BE
MLD TO
Sec. of State
PER - Sec. of St
PER - ATTORNEY
9-2-10

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. **10-C-312**

ENCOMPASS INSURANCE, et al.

Defendants.

SUMMONS

To the above-named Defendant:
ENCOMPASS INSURANCE COMPANY
CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated September 3, 2010

Laura E. Rattenni
Clerk of the Circuit Court

By: [signature]
DEPUTY CLERK

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

9171 9237 9000 1000 3113 47

RECEIVED &
SEP 10 2010
JEFFERSON COUNTY
CIRCUIT COURT

Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 300329
Defendant: Michelle Grossman

Laura E. Rattenni, Circuit Clerk
Jefferson County Circuit
PO Box 1234
Charles Town WV 25414

9/7/2010
Civil Action: 10-C-312

I am enclosing:

____ summons	____ affidavit	1 summons and complaint
____ notice	____ answer	____ summons returned from post office
____ order	____ cross-claim	____ summons and amended complaint
____ petition	____ counterclaim	____ 3rd party summons and complaint
____ motion	____ request	____ no return from post office
____ suggestions	____ certified return receipt	____ notice of mechanic's lien
1 interrogatories	1 request for production	____ suggestee execution
____ original	____ request for admissions	____ Other
____ subpeona duces tecum		

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant

Natalie E. Tennant
Secretary of State

RETURN

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. **10-C-**312

ENCOMPASS INSURANCE, et al.

Defendants.

ACCEPTED FO[R] SERVICE OF PRO[CESS]
2010 SEP -7 PM 1:15
SECRETARY OF S[TATE]
STATE OF WEST VIRGI[NIA]

SUMMONS

To the above-named Defendant:

MICHELLE GROSSMAN
P.O. BOX 16203
READING, PA 19612-6203

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattenni
Clerk of the Circuit Court

By Ashley Weimer, Deputy

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

9171 9237 9000 1000 3113 30

RECEIVED
SEP 10 2010
JEFFERSON COUNTY
CIRCUIT COURT

Natalie E. Tennant
Secretary of State
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 300328
Defendant: Encompass Indemnity Company

Laura E. Rattenni, Circuit Clerk
Jefferson County Circuit
PO Box 1234
Charles Town WV 25414

9/7/2010
Civil Action: 10-C-312

I am enclosing:

____ summons	____ affidavit	1 summons and complaint
____ notice	____ answer	____ summons returned from post office
____ order	____ cross-claim	____ summons and amended complaint
____ petition	____ counterclaim	____ 3rd party summons and complaint
____ motion	____ request	____ no return from post office
____ suggestions	____ certified return receipt	____ notice of mechanic's lien
1 interrogatories	1 request for production	____ suggestee execution
____ original	____ request for admissions	____ Other
____ subpeona duces tecum		

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your authorized insurance company.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plantiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant

Natalie E. Tennant
Secretary of State

RETURN

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. 10-C-312

ENCOMPASS INSURANCE, et al.

Defendants.

ACCEPTED FOR SERVICE OF PROCESS
2010 SEP -7 PM 1:14
SECRETARY OF STATE
STATE OF WEST VIRGINIA

SUMMONS

To the above-named Defendant:
ENCOMPASS INDEMNITY COMPANY
CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Stephen G. Skinner, plaintiff's attorney, whose address is P.O. Box 487, Charles Town, WV 25414-0487, an answer, including any related counterclaim you may have, to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated 8/30/10

Laura E. Rattenni
Clerk of the Circuit Court

By: Ashley Wimer, Deputy

WV Secretary of State

....

Receipt #: 896986
Station ID: M01

List Of Services

....

sp 5 5 encompass indemnity $60.00

Total: $60.00

Payment Details:

....

skinner law
k 39173 $60.00

....

Original Transaction Date: 09/01/2010

Thank You For Your Business!

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

9171 9237 9000 1000 3113 23

RECEIVED &
SEP 10 2010
JEFFERSON COUNTY
CIRCUIT COURT

Natalie E. Tennant
Secretary of State
Telephone. 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

ControlNumber: 300327
Defendant: Encompass Insurance Company

Laura E. Rattenni, Circuit Clerk
Jefferson County Circuit
PO Box 1234
Charles Town WV 25414

9/7/2010
Civil Action: 10-C-312

I am enclosing:

____	summons	____	affidavit	1	summons and complaint
____	notice	____	answer	____	summons returned from post office
____	order	____	cross-claim	____	summons and amended complaint
____	petition	____	counterclaim	____	3rd party summons and complaint
____	motion	____	request	____	no return from post office
____	suggestions	____	certified return receipt	____	notice of mechanic's lien
1	interrogatories	1	request for production	____	suggestee execution
____	original	____	request for admissions	____	Other
____	subpeona duces tecum				

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Sincerely,

Natalie E. Tennant

Natalie E. Tennant
Secretary of State

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

BANK OF CHARLES TOWN,

Plaintiff,

vs. **10-C-312**

ENCOMPASS INSURANCE, et al.

Defendants.

ACCEPTED FOR SERVICE OF PROC
2010 SEP -7 PM 1:14
SECRETARY OF STATE
STATE OF WEST VIRGINIA

SUMMONS

To the above-named Defendant:
ENCOMPASS INSURANCE COMPANY
CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313

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Dated September 3, 2010

Laura E. Rattenni
Clerk of the Circuit Court

By: [signature]
DEPUTY CLERK